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**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON**

7 JOHN ADRAIN, an Individual, ) Case No. 2:16-cv-00142-SAB  
8 Plaintiff, )  
9 vs. ) **DEFENDANTS' RESPONSE AND**  
10 WELLS FARGO BANK, N.A., a ) **OBJECTIONS TO PLAINTIFF'S**  
foreign corporation; QUALITY LOAN ) **STATEMENT OF MATERIAL**  
11 SERVICE CORPORATION OF ) **FACTS**  
WASHINGTON, INC., a Washington )  
corporation; and HSBC BANK USA, ) NOTED FOR HEARING:  
N.A., a Maryland corporation, ) September 26, 2018 at 2:15 p.m.  
12 ) Location: Yakima Courthouse  
13 Defendants. ) 25 S. 3rd St., Courtroom 203  
14 ) Yakima, WA 98901  
15 ) With Oral Argument  
 ) The Honorable Stanley A. Bastian

Defendants Wells Fargo and HSBC Bank as Trustee submit the following response and objections to Plaintiff's Statement of Material Facts:

**DEFENDANTS' RESPONSE AND OBJECTIONS TO PLAINTIFF'S  
STATEMENT OF MATERIAL FACTS**

1. Plaintiff's Fact No. 3: This fact is not material to this motion.  
dants dispute the amount of the monthly mortgage payment.
2. Plaintiff's Fact No. 6: Includes facts not material to this motion.

1 Relies on facts not in evidence.

2       3. Plaintiff's Fact No. 7: Includes facts not material to this motion.

3 Disputed. Relies on facts not in evidence.

4       4. Plaintiff's Fact No. 9: These facts are not material to this motion.

5 Disputed. Relies on facts not in evidence. Submitted documents signed under  
6 penalty of perjury are contradictory. *See* ECF No. 79-9 at 5, 79-12 at 6, 79-16 at  
7 18, 79-16 at 43, 79-17 at 22, 79-28 at 14, 79-28 at 52.

8       5. Plaintiff's Fact No. 11: Includes facts not material to this motion.

9 Disputed. Only one letter was included in Faust Ex. B.

10      6. Plaintiff's Fact No. 12: Disputed. None of the letters attached at Faust  
11 Ex. C contain conflicting information.

12      7. Plaintiff's Fact No. 13: Disputed. Relies on facts not in evidence. Best  
13 evidence rule. Plaintiff cites only to his deposition testimony. Defendants,  
14 however, do not dispute that Plaintiff received a letter stating that the investor has  
15 not given Wells Fargo the contractual authority to modify Plaintiff's loan. *See* ECF  
16 No. 74-5 at 2-3.

17      8. Plaintiff's Fact No. 16: Includes facts not material to this motion.

18 Disputed. Relies on facts not in evidence. Defendants do not dispute that Plaintiff  
19 failed to make the November 2012 mortgage payment. *See* ECF No. 74 at ¶ 12.

20      9. Plaintiff's Fact No. 17: Includes facts not material to this motion.

21 Disputed Relies on facts not in evidence.

22      10. Plaintiff's Fact No. 19: Includes facts not material to this motion.

23 Disputed. Hearsay. Also, not supported by evidence before the court. The February

1 6, 2013, letter from Robert Redmond to Wells Fargo does not state or mention  
2 "how frustrating it was for Wells Fargo to continue to request the same  
3 documentation Adrain had already submitted."

4 11. Plaintiff's Fact No. 20: Facts not material to this motion. Hearsay.

5 12. Plaintiff's Fact No. 21: Facts not material to this motion. Disputed.

6 Lacks foundation. Relies on facts not in evidence.

7 13. Plaintiff's Fact No. 23: Disputed. Hearsay. Misstates contents of cited  
8 email. Mr. Walker did not find HAMP as well as other alternative mortgage  
9 solutions were available. Mr. Walker's email states "this is a MBS file – options are  
10 very limited...[s]ince the mortgagors loan is MBS file, and his current DTI is  
11 <38%, which is the target DTI, the only option available is a piggy back, in which  
12 the delinquent payments are converted two a second lien drawing no interest, the  
13 second lien then comes due upon the house being sold or the final payment coming  
14 due." See ECF No. 79-7 at 3.

15 14. Plaintiff's Fact No. 24: Includes facts not material to this motion.  
16 Disputed. Hearsay. Misrepresents content of letter. Defendants do not dispute that  
17 Ms. Lazaro sent Plaintiff a letter.

18 15. Plaintiff's Fact No. 25: Fact not material to this motion. Disputed.  
19 Misstates facts. Evidence shows Plaintiff provided the RMA form, but no other  
20 requested documents.

21 16. Plaintiff's Fact No. 26: Fact not material to this motion. Disputed.  
22 Hearsay. Misstates correspondence. Cited March 20, 2013 letter acknowledges  
23 receipt of documents and requests Plaintiff to gather additional documents to have

1 handy when he calls Wells Fargo. *See* ECF No. 79-9 at 9. Relies on evidence not  
2 submitted. March 22, 2013, letter is not contained within cited exhibit.

3       17. Plaintiff's Fact No. 27: Fact not material to this motion.

4       18. Plaintiff's Fact No. 28: Fact not material to this motion.

5 Inflammatory. Plaintiff's cited exhibit contains no cease and desist letter.

6       19. Plaintiff's Fact No. 29: Fact not material to this motion. Disputed  
7 fact. Plaintiff's cited exhibit contains no letter from Wells Fargo regarding the  
8 purported cease and desist letter.

9       20. Plaintiff's Fact No. 30: Hearsay. Plaintiff cites to no exhibits or  
10 documents in support of any of the allegations contained within this paragraph.

11       21. Plaintiff's Fact No. 31: Fact not material to this motion. Hearsay.  
12 Plaintiff cites to no exhibits or documents in support of any of the allegations  
13 contained within this paragraph.

14       22. Plaintiff's Fact No. 32: Fact not material to this motion. Hearsay.  
15 The exhibit Plaintiff cites does not support the allegations in this paragraph.

16       23. Plaintiff's Fact No. 34: Facts not material to this motion. Disputed.  
17 Hearsay. Assumes facts not in evidence.

18       24. Plaintiff's Fact No. 35: Fact not material to this motion. Hearsay.  
19 Plaintiff's cited exhibit does not contain a response from April Sheppard.

20       25. Plaintiff's Fact No. 36: Fact not material to this motion. Disputed.  
21 Hearsay. Assumes facts not in evidence. Misleading. Plaintiff's fact complains  
22 about sending documents sent to Wells Fargo a year prior; however, he had been  
23 notified that all new documents must be provided (ECF No. 74-8). The referenced

1 letter from Mr. Mulholland also notifies Plaintiff of the necessity for new  
2 documents – “Please note, the information in the documents must be the most  
3 recent you have available, ***and can only be used for 90 days from the date we***  
4 ***receive them.***” (ECF No. 79-16 at 5) (emphasis added).

5 26. Plaintiff’s Fact No. 37: Fact not material to this motion. Assumes  
6 facts not in evidence.

7 27. Plaintiff’s Fact No. 39: Fact not material to this motion.  
8 Argumentative. Misleading. *See* Defendant’s objection to Fact No. 36.

9 28. Plaintiff’s Fact No. 40: Fact not material to this motion.  
10 Argumentative. Misleading. *See* Defendant’s objection to Fact No. 36.

11 29. Plaintiff’s Fact No. 41: Fact not material to this motion. Disputed.  
12 Assumes facts not in evidence. Plaintiff has not cited to or provided the “numerous  
13 records and other documents” sent to Wells Fargo following its request in 2014.

14 30. Plaintiff’s Fact No. 45: Includes facts not material to this motion.  
15 Disputed. Speculative and conclusory. Misstates evidence.

16 31. Plaintiff’s Fact No. 51: Fact not material to this motion. Disputed.  
17 Referenced appraisal report values property at \$630,000.

18 32. Plaintiff’s Fact No. 52: Fact not material to motion. Hearsay.  
19 Argumentative.

20 33. Plaintiff’s Fact No. 59: Fact not material to this motion. Disputed.  
21 Misstates evidence. The July 6, 2015 letter and the March 20, 2015 letter do not  
22 request identical information. In March, Wells Fargo requested a hardship letter,  
23 proof of occupancy, tax returns, paystubs – 30 days proof of income, financial

1 worksheet, profit and loss statement, letter of explanation authorizing Wells Fargo  
2 to escrow taxes and insurance, and business bank statements for self-employment  
3 income. (ECF No. 79-28 at 2-3). In July, Wells Fargo requested a letter explaining  
4 how Plaintiff's patent income is paid to him, bank statements from January – March  
5 2015 for the account ending in 5718, bank statements for the account ending in  
6 1756, award letter for patent income, IRS 4506-T for Heracles Research  
7 Corporation, and business tax returns for Heracles. (ECF No. 79-36 at 2-3).

8       34. Plaintiff's Fact No. 60: Fact not material to this motion. Disputed.  
9 Best evidence rule. Assumes facts not in evidence.

10      35. Plaintiff's Fact No. 62: Fact not material to this motion. Disputed.  
11 Best evidence rule. Assumes facts not in evidence.

12      36. Plaintiff's Fact No. 64: Disputed. Misstates evidence. Wells Fargo  
13 notified Plaintiff on April 11, 2012, both orally and in writing, that “[Wells Fargo]  
14 service[s] your loan on behalf of an investor that has not given us the contractual  
15 authority to modify your loan.” (ECF No. 74 at ¶¶ 9, 10, Ex. 5 (ECF No. 74-5)).

16      37. Plaintiff's Fact No. 65: Fact not material to this motion. Disputed.  
17 Best evidence rule. Assumes facts not in evidence.

18      38. Plaintiff's Fact No. 74: Includes Facts not material to this motion.  
19 Disputed . Speculative and conclusory. Lacks evidentiary support.

20      39. Plaintiff's Fact No. 79: Includes facts not material to the motion.  
21 Disputed. Best evidence rule. Assumes facts not in evidence.

22      40. Plaintiff's Fact No. 80: Includes facts not material to this motion.  
23 Disputed. Hearsay. Lacks evidentiary support. Plaintiff alleges he received

1 conflicting information, but points to no evidence in support. Plaintiff points to no  
2 document where Wells Fargo informs him he makes too much money or not  
3 enough money to qualify for HAMP.

4       41. Plaintiff's Fact No. 81: Fact not material to this motion. Disputed.  
5 Hearsay. Exhibits affixed to the Faust Declaration, filed by Plaintiff, including  
6 letters which state: "Please note, the information in the documents must be the  
7 most recent you have available, ***and can only be used for 90 days from the date we***  
8 ***receive them.***" (ECF No. 79-16 at 5) (emphasis added).

9       42. Plaintiff's Fact No. 82: Includes facts not material to this motion.  
10 Disputed. Argumentative. Best evidence rule. Assumes facts not in evidence.

11       43. Plaintiff's Fact No. 83: Fact not material to this motion. Best  
12 evidence rule.

13       44. Plaintiff's Fact No. 84: Misleading. Plaintiff propounded discovery  
14 requests on Wells Fargo seeking the identified information. Wells Fargo objected.  
15 In a motion to compel, the Court did not enter an order compelling Wells Fargo to  
16 respond. Rather, the Court asked Plaintiff to re-phrase and re-serve the discovery  
17 requests. Plaintiff failed to re-serve any discovery requests on Wells Fargo.

18       45. Plaintiff's Fact No. 85: Disputed. Best evidence rule. Plaintiff points  
19 to no evidence that he incurred extra mediation costs or that there is a cloud on the  
20 title to his home as a result from any act of Wells Fargo. Plaintiff also provides no  
21 actual paid invoices or paid accounting statements from his bookkeeper and  
22 accountant supporting his claimed expenses.

1                   **DEFENDANTS' RESPONSES TO PLAINTIFF'S OBJECTIONS AND**  
2                   **DISPUTES AS TO MATERIAL FACTS**

3         1.     Defendants' Fact No. 6: Plaintiff's objection or response misstates the  
4     facts. Plaintiff stated he was attempting to refinance and did not want to discuss  
5     loss mitigation options. Refinance and loss mitigation are not the same. Plaintiff's  
6     response assumes efforts to refinance are the same as working with loss mitigation.

7         2.     Defendants' Fact No. 19: Plaintiff contends, without any documents  
8     in support, that his child support payments have never been \$1,650 per month.  
9     Documents in evidence, which are signed by Plaintiff under penalty of perjury,  
10    state that his spousal/child support obligations are \$1,650 per month. There are  
11    multiple years and months in which Plaintiff signed a document, under penalty of  
12    perjury, stating his child support obligations. *See* ECF No. 79-9 at 5, 79-12 at 6,  
13    79-16 at 18, 79-16 at 43, 79-17 at 22, 79-28 at 14, 79-28 at 52.

14         3.     Defendants' Fact No. 23: Plaintiff's response assumes facts not in  
15    evidence. The May 23, 2014 letter from Wells Fargo requests the Homeowners  
16    Assistance Form and 2012 signed tax returns. Plaintiff points to no evidence that  
17    he submitted his tax returns when requested.

18         4.     Defendants' Fact No. 32: *See* response re Defendants' fact no. 19.  
19     Plaintiff's "mistake" of stating his child support obligations were \$1,650 was  
20    repeated numerous times and through numerous years.

21     ///

22     ///

23     ///

1 DATED this 22<sup>nd</sup> day of August, 2018.

2                            /s/ Valerie I. Holder  
3                            **Valerie I. Holder, WSBA No. 42968**  
4                            Attorney for Defendants  
5                            Wells Fargo Bank, N.A. and  
6                            HSBC Bank USA, National Association as  
7                            Trustee for Wells Fargo Asset Securities  
8                            Corporation, Mortgage Pass-Through  
9                            Certificates, Series 2007-11  
10                          Keesal, Young & Logan  
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12                          Seattle, Washington 98101  
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14                          Facsimile: (206) 343-9529  
15                          E-mail: valerie.holder@kyl.com

1                   **CERTIFICATE OF SERVICE**

2                   I hereby certify that on the date given below, I electronically filed the  
3 foregoing DEFENDANTS' RESPONSE AND OBJECTIONS TO PLAINTIFF'S  
4 STATEMENT OF MATERIAL FACTS with the Clerk of the Court using the  
5 CM/ECF system which will send electronic notification of such filing to the  
6 following persons:

7                   Kevin Roberts  
8                   Roberts Freebourn, PLLC  
9                   1325 W. 1st Ave., Ste 303  
10                  Spokane, WA 99201-4600

11                  Counsel for Plaintiff

12                  DATED this 22<sup>nd</sup> day of August, 2018, at Seattle, Washington.

13                    
14                  Marcee Stone-Vekich

15 KYL4825-2042-9936.1